

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SELECT PERSONNEL MANAGEMENT, INC.,

an Ontario, Canada, corporation d/b/a

SELECT MANAGEMENT SOLUTIONS, and

JAMES STEWART, individually and as an officer

or director of Select Personnel Management, Inc.,

d/b/a Select Management Solutions,

Defendants.

07C 0529

Case No.

JUDGE NORGLÉ

MAGISTRATE JUDGE COLE

**TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE,
OTHER EQUITABLE RELIEF, AND ORDER TO SHOW CAUSE
WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

Plaintiff, Federal Trade Commission ("FTC" or "Commission"), having filed its Complaint for Injunctive and Other Equitable Relief, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101, *et seq.*, and having moved *ex parte* for a Temporary Restraining Order with Asset Freeze, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65, and the Court having considered the Complaint, declarations, exhibits, and memorandum of law filed in support thereof, and now, being advised in the premises, finds that:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and there is good cause to believe it will have jurisdiction over the parties hereto;
2. Venue properly lies with this Court;
3. There is good cause to believe that Defendants have engaged in, and are likely to engage in, acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule," 16 C.F.R. Part 310, and that the Commission is therefore likely to prevail on the merits of this action;
4. There is good cause to believe that immediate and irreparable harm will result from Defendants' ongoing violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule, 16 C.F.R. Part 310, unless Defendants are restrained and enjoined by order of this Court;
5. There is good cause to believe that Defendants have engaged in a scheme to defraud consumers by falsely promising consumers reduced interest rates on their existing credit cards and other savings, that Defendants have retained ill-gotten gains from these practices, and that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary restitution will occur from the sale, transfer, assignment, or other disposition or concealment by Defendants of their assets or records unless Defendants immediately are restrained and enjoined by order of this Court. Therefore, there is good cause for relieving the Commission of the duty to provide Defendants with prior notice of the Commission's motion and for the entry of ancillary relief contained in this Order, including freezing Defendants' assets and prohibiting Defendants from destroying records;

6. There is good cause for issuing this Order pursuant to Federal Rule of Civil Procedure 65(b), Fed. R. Civ. P. 65(b);

7. Weighing the equities and considering the Commission's likelihood of ultimate success, a temporary restraining order with asset freeze and other equitable relief is in the public interest; and

8. No security is required of any agency of the United States for the issuance of a temporary restraining order. *See* Fed. R. Civ. P. 65(c).

DEFINITIONS

1. **"Account number"** means any credit or debit card number, bank account number, deposit account number, personal identification number ("PIN"), access code, or security code.

2. **"Asset" or "assets"** means any legal or equitable interest in, right to, or claim to, any real and personal property of any Defendant, or held for the benefit of any Defendant, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), chattels, leaseholds, contracts, mails or other deliveries, shares of stock, lists of consumer names, accounts, credits, receivables, funds, monies, and all cash, wherever located.

3. **"Assisting others"** means providing any of the following goods or services to any person or entity engaged in telemarketing: (a) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (b) providing for or arranging for the provision of mail or telephone lists that contain, incorporate, or utilize consumers' account numbers; (c) preparing or providing, or causing to be prepared or provided,

telephone sales scripts or other materials for use in connection with the promotion of products or services to consumers; (d) providing, mailing or shipping, or arranging for the provision, mailing, or shipping, of fulfillment products or services; (e) providing or arranging for the provision of telemarketing or computer processing services; (f) providing or facilitating the means of obtaining payment from consumers, by providing or facilitating access to the credit card or bank account payment and collection system; and (g) providing marketing services of any kind.

4. **“Commercial Mail Receiving Agency” (“CMRA”)** means any commercial mail receiving and/or forwarding agencies, commercial freight holding and/or forwarding agencies, customs brokers, or other parties holding, receiving, or forwarding mail and/or freight on behalf of Defendants.

5. **“Consumer”** means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

6. **“Customer”** means any person who has paid, or may be required to pay, for goods or services offered for sale or sold by Defendants.

7. **“Defendant” or “Defendants”** means Select Personnel Management, Inc., doing business as Select Management Solutions, and James Stewart.

8. **“Document” or “record”** is synonymous in meaning and equal in scope to the usage of the term in Federal Rules of Civil Procedure 34(a) and means:

a. The original or a true copy of any written, typed, printed, electronically stored, transcribed, taped, recorded, filmed, punched, or graphic matter or other data compilations of any kind, including, but not limited to, letters, e-mail or other correspondence, messages, memoranda, interoffice communications, notes, reports,

summaries, manuals, magnetic tapes or disks, tabulations, books, records, checks, invoices, work papers, journals, ledgers, statements, returns, reports, schedules, or files; and

b. Any information stored on any desktop personal computer ("PC") and workstations, laptops, notebooks, and other portable computers, whether assigned to individuals or in pools of computers available for shared use; and home computers used for work-related purposes; backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether stored onsite with the computer used to generate them, stored offsite in another company facility or stored offsite by a third-party, such as in a disaster recovery center; and computers and related offline storage used by Defendants' participating associates, which may include persons who are not employees of the company or who do not work on company premises.

9. **"Financial institution"** means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

10. **"Material"** means likely to affect a person's choice of, or conduct regarding, goods or services.

11. **"Person"** or **"persons"** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

12. **"Plaintiff," "Commission,"** or **"FTC"** means the Federal Trade Commission.

13. "Telemarketer" means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(bb).

ORDER

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby temporarily restrained and enjoined from:

A. Making, or assisting others in making, any express or implied representation or omission of material fact that is false or misleading, in any manner, to any person or entity, including, but not limited to, any false or misleading statement:

1. That Defendants are affiliated with consumers' credit card companies;
2. That consumers who pay a fee and receive Defendants' services are likely to experience a reduction in their existing credit card interest rates to rates between 4.75 percent and 9 percent;
3. That consumers who pay a fee and receive Defendants' services will save at least \$2500 in credit card interest charges;
4. That Defendants will provide a refund of the cost of Defendants' services to consumers who pay a fee to purchase those services and do not save at least \$2500 in

credit card interest charges; and

5. Concerning any material fact regarding any item, product, good, or service sold or offered for sale by Defendants;

B. Violating, or assisting others in violating, any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, *et seq.*, including, but not limited to:

1. Violating Sections 310.3(a)(2)(iii), (iv), and (vii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii), (iv), and (vii), by misrepresenting, directly or by implication, that:

a. Defendants are affiliated with consumers' credit card companies;

b. Consumers who pay a fee and receive Defendants' services will, or are highly likely to, reduce their existing credit card interest rates to rates between 4.75 percent and 9 percent;

c. Consumers who pay a fee and receive Defendants' services will save at least \$2500 in credit card interest charges; and

d. Defendants will provide a refund of the cost of Defendants' services to consumers who pay a fee to purchase those services and do not save at least \$2500 in credit card interest charges; and

2. Violating Section 310.4(a)(7) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(7), by failing to transmit or to cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of Defendants, or the name of a telemarketer calling on behalf of Defendants, to caller identification services in use by recipients of Defendants' telemarketing calls; and

C. Assisting others who violate any provisions of Subsections A and B of this Section.

II.

ASSET FREEZE

IT IS FURTHER ORDERED that:

A. Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, except as stipulated by the parties, or as directed by further order of the Court, are hereby temporarily restrained and enjoined from:

1. Selling, liquidating, assigning, transferring, converting, loaning, encumbering, pledging, concealing, dissipating, spending, withdrawing, or otherwise disposing of any funds, real or personal property, or other assets or any interest therein, wherever located, including any assets outside the territorial United States, which are:

- a. In the actual or constructive possession of any Defendant;
- b. Owned or controlled by, or held, in whole or in part for the benefit of, or subject to access by, or belonging to, any Defendant; or
- c. In the actual or constructive possession of, or owned or controlled by, or subject to access by, or belonging to, any corporation, partnership, trust or any other entity directly or indirectly owned, managed, or controlled by, or under

common control with, any Defendant, including, but not limited to, any assets held by or for any Defendant at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, common carrier, credit card processing agent, customs broker, commercial mail receiving and/or forwarding agency, commercial freight holding and/or forwarding agency, or other financial institution or depository institution of any kind either within or outside the United States;

2. Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities, titled in the name of any Defendant, or subject to access by any Defendant or under any Defendant's control, without providing Plaintiff prior notice and a reasonable opportunity to first inspect the contents in order to determine that they contain no assets covered by this Section;

3. Cashing any checks or depositing any payments received from customers of Defendants;

4. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any Defendant;

5. Transferring any funds or other assets subject to this Order for attorney's fees or living expenses, except from accounts or other assets identified by prior written agreement with counsel for the Commission; provided that no attorney's fees or living expenses, other than those set forth in Subsection B of this Section, and only in accordance with the procedures set forth in Subsection B of this Section, shall be paid from funds or other assets subject to this Order until the financial statements required by

Section III are provided to counsel for the Commission;

B. Notwithstanding the above, any Defendant may pay from his personal funds reasonable, usual, ordinary, and necessary living expenses and attorney's fees, not to exceed \$1,000, prior to the submission of the financial statements required by Section III. No such expenses, however, shall be paid from funds subject to this Order except from cash on the person of any Defendant, or from an account designated by prior written agreement with counsel for the Commission; and

C. The assets affected by this Section shall include both existing assets and assets acquired after the effective date of this Order, including without limitation, those acquired by loan or gift. Defendants shall hold all assets, including without limitation, payments, loans, and gifts, received after service of this Order.

III.

FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that at least three (3) calendar days prior to the preliminary injunction hearing in this matter, and in no event later than ten (10) calendar days after entry of this Order, each Defendant shall provide to counsel for the Commission:

A. A completed financial statement, accurate as of the date of service of this Order, on the form served on Defendants with this Order, for such Defendant individually, and for each corporation or business entity under which such Defendant conducts business or of which such Defendant is an officer, and for each trust of which such Defendant is a trustee. Said financial statement shall include assets held outside the territory of the United States. Defendants shall attach to their completed financial statements copies of all local, state, provincial, and federal

income and property tax returns, with attachments and schedules as called for by the instructions to the financial statements;

B. A completed statement, verified under oath, of all payments, transfers, or assignments of funds, assets, or property worth \$1,000 or more since January 1, 2005. Such statement shall include: (1) the amount transferred or assigned; (2) the name, address, and telephone number of each transferee or assignee; (3) the date of the assignment or transfer; and (4) the type and amount of consideration paid by or to Defendant. Each statement shall specify the name and address of each financial institution or brokerage firm at which Defendant has accounts or safe deposit boxes. Said statements shall include assets held in foreign as well as domestic accounts; and

C. A completed Consent to Release Financial Information form, attached to this Order as **Attachment A**, providing Plaintiff with access to Defendants' records and documents held by financial institutions or other entities outside the territorial United States.

IV.

DUTIES OF THIRD PARTIES HOLDING DEFENDANTS' ASSETS

IT IS FURTHER ORDERED that, pending determination of the FTC's request for a preliminary injunction, any financial institution, or any person or other entity served with a copy of this Order shall:

A. Hold and retain within such entity's or person's control, and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of any of the funds, documents, property, or other assets held by or under such entity's or person's control:

1. On behalf of, or for the benefit of, any Defendant or other party subject to Section II above;

2. In any account maintained in the name of, or subject to withdrawal by, any Defendant or other party subject to Section II above; and

3. That are subject to access or use by, or under the signatory power of, any Defendant or other party subject to Section II above;

B. Deny access to any safe deposit boxes that are either:

1. Titled in the name, individually or jointly, of any Defendant or other party subject to Section II above; or

2. Subject to access by any Defendant or other party subject to Section II above;

C. Provide to counsel for the Commission, within three (3) business days, by facsimile or by overnight delivery, a sworn statement setting forth:

1. The identification of each account or asset titled in the name, individually or jointly, or held on behalf of, or for the benefit of, any Defendant or other party subject to Section II above, whether in whole or in part;

2. The balance of each such account, or a description of the nature and value of such asset, as of the close of business on the day on which this Order is served, and if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and

3. The identification and location of any safe deposit box that is either titled in the name of, individually or jointly, or is otherwise subject to access or control by, any Defendant or other party subject to Section II above, whether in whole or in part;

D. Within five (5) business days of a request from the FTC, provide to the FTC copies of all records or other documents pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

E. The assets and funds subject to this Section include existing assets and assets acquired after the effective date of this Order. This Section shall not prohibit transfers in accordance with any provision of this Order, or any further order of the Court.

V.

DUTIES OF THIRD PARTIES TO WITHHOLD DEFENDANTS' MAIL

IT IS FURTHER ORDERED that:

A. Any CMRA where Defendants maintain an account, including, but not limited to, UPS Store, 10859 Emerald Coast Parkway West, #204, Destin, Florida 32550, and UPS Store, 126 East Wing Street, Arlington Heights, Illinois 60004, or any branches thereof, and which are served with a copy of this Order, or otherwise have actual or constructive knowledge of this Order, shall for the duration of this Order, retain and forward to Plaintiff, at the address designated in Section XV below, all mail received that is addressed to any Defendant and/or addressed to any other name under which Defendants are doing business. Plaintiff will retain

this mail for the duration of this Order, until further order of the Court, or upon stipulation of the parties; and

B. Defendants, within three (3) business days of entry of this Order, shall provide to counsel for the Commission a complete list of all CMRA accounts used by any Defendant from January 1, 2005, to the date of entry of this Order. Defendants shall notify counsel for the Commission of any CMRA account created by any Defendant after the date of entry of this Order, within three (3) business days of its creation. Such notice shall include the name of the CMRA, a copy of the CMRA agreement/application, the account number, the address of the CMRA, the name and telephone number of a contact person at the CMRA, and all business names used by said Defendant receiving mail at that account.

VI.

DUTIES OF THIRD PARTIES PROCESSING PAYMENTS FOR DEFENDANTS

IT IS FURTHER ORDERED that any automated clearing house, network transaction processor, business entity or person providing any services or assistance in processing Defendants' customer payments, including, but not limited to, payments made by credit or debit cards, for any of the Defendants, that receives actual notice of this Order by personal service or otherwise, is hereby temporarily restrained and enjoined from providing any assistance in the processing of any payments made by consumers to any of the Defendants and from collecting any fees or charges in connection with providing such assistance.

VII.

SUSPENSION OF COLLECTION ON ACCOUNTS

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly, or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby temporarily restrained and enjoined from attempting to collect, collecting, or assigning any right to collect payment for Defendants' credit card interest rate reduction services.

VIII.

PRESERVATION OF RECORDS AND REPORT OF NEW BUSINESS ACTIVITY

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby temporarily restrained and enjoined from:

A. Failing to make and keep books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipts ledgers, cash disbursements ledgers and source documents, documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Defendants;

B. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, contracts, agreements, customer files, customer lists, customer addresses and telephone numbers, correspondence, advertisements, brochures, sales material, training material, sales presentations, documents evidencing or referring to Defendants' products or services, data, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, "verification" or "compliance" tapes or other audio or video tape recordings, receipt books, invoices, postal receipts, ledgers, personal and business canceled checks (fronts and backs) and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind, including electronically-stored materials, that relate to the business practices or business or personal finances of Defendants or other entities directly or indirectly under the control of Defendants; and

C. Creating, operating, or exercising any control over any new business entity, whether newly-formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first providing the FTC with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

IX.

PROHIBITION ON DISCLOSING CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby temporarily restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, birth date, telephone number, e-mail address, Social Security number, credit card number, bank account number, or other financial or identifying personal information of any person from whom or about whom any Defendant obtained such information in connection with the activities alleged in the FTC's Complaint; and

B. Benefitting from or using the name, address, birth date, telephone number, e-mail address, Social Security number, credit card number, bank account number, or other financial or identifying personal information of any person from whom or about whom any Defendant obtained such information in connection with the activities alleged in the FTC's Complaint;

Provided, however, that Defendants may disclose such financial or identifying personal information to a law enforcement agency or as required by any law, regulation, or court order.

X.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each affiliate, partner, division, sales entity, successor, assign, officer, director, employee, independent contractor, agent, attorney, and/or representative of any Defendant. Within five (5) calendar days following service of this Order by Plaintiff, Defendants shall serve on Plaintiff an affidavit identifying the name, title, address, telephone number, date of service, and manner of service of each person or entity Defendants served with a copy of this Order in compliance with this provision.

XI.

SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by facsimile transmission, personal or overnight delivery, or by first class mail, by agents and employees of the Commission or any state, federal or international law enforcement agency, or by private process server, on: (1) Defendants; (2) any financial institution, entity, or person that holds, controls, or maintains custody of any documents or assets of any Defendant, or that held, controlled, or maintained custody of any documents or assets of any Defendant; or (3) any other person or entity that may be subject to any provision of this Order. Service upon any branch or office of any financial institution or entity shall effect service upon the entire financial institution or entity.

XII.

CONSUMER REPORTS

IT IS FURTHER ORDERED that pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency may furnish a consumer report concerning any Defendant to the Commission.

XIII.

EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that, notwithstanding the provisions of Federal Rules of Civil Procedure 26(d) and (f) and 30(a)(2)(C), and pursuant to Federal Rules of Civil Procedure 30(a), 34, and 45, the parties are granted leave, at any time after service of this Order, to:

A. Take the deposition, on three (3) calendar days' notice, of any person, whether or not a party, for the purpose of discovering the nature, location, status, and extent of the assets of the Defendants, or their affiliates or subsidiaries; the nature and location of documents reflecting the Defendants' business transactions, or the business transactions of the Defendants' affiliates or subsidiaries; the location of any premises where Defendants, directly or through any third party, conduct business operations; the Defendants' whereabouts; and/or the applicability of any evidentiary privileges to this action. The limitations and conditions set forth in Fed. R. Civ. P. 30(a)(2)(B) and 31(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Section. Any such depositions taken pursuant to this Section shall not be counted toward the ten (10) deposition limit set forth in Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A). Service of discovery upon a party, taken pursuant to this Section, shall be sufficient if made by facsimile or by overnight delivery; and

B. Demand the production of documents, on five (5) calendar days' notice, from any person, whether or not a party, relating to the nature, status, or extent of Defendants' assets, or of their affiliates or subsidiaries; the location of documents reflecting the business transactions of Defendants, or of their affiliates or subsidiaries; the location of any premises where Defendants, directly or through any third party, conduct business operations; the Defendants' whereabouts; and/or the applicability of any evidentiary privileges to this action, provided that twenty-four (24) hours' notice shall be deemed sufficient for the production of any such documents that are maintained or stored only as electronic data.

XIV.

ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED pursuant to Federal Rule of Civil Procedure 65(b), that Defendants shall appear before this Court, on the 23rd floor of the Dirksen Federal Courthouse, 219 South Dearborn Street, Chicago, Illinois, on the 12th day of February, 2007, at 9:30 o'clock a.m., to show cause, if there is any, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint against Defendants, enjoining them from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule, 16 C.F.R. Part 310, continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

Provided that Defendants must file with the Clerk's Office and deliver to the FTC any memoranda and evidentiary materials in response to the Order to Show Cause Why a Preliminary Injunction Should Not Issue no later than seventy-two (72) hours prior to the time scheduled for the hearing. The Commission may file responsive or supplemental pleadings, materials,

affidavits, or memoranda with the Court and serve the same on counsel for Defendants no later than twenty-four (24) hours prior to the scheduled preliminary injunction hearing. An evidentiary hearing on the Commission's request for a preliminary injunction is not necessary unless Defendants demonstrate that they have, and intend to introduce, evidence that raises a genuine and material factual issue. *See, e.g., In re Aimster Copyright Litigation*, 334 F.3d 643, 653-54 (7th Cir. 2003), *cert. denied*, 540 U.S. 1107 (2004); *Promatek Indus., Ltd. v. Equitrac Corp.*, 300 F.3d 808, 814 (7th Cir. 2002); and

Provided further that, if any party to this action intends to present the testimony of any witness at the preliminary injunction hearing, that party shall, at least seventy-two (72) hours prior to the scheduled hearing, file with the Court and serve on all other parties a statement disclosing the name, address, and telephone number of any such witness, and either a summary of the witness' expected testimony or the witness' affidavit or declaration revealing the substance of such witness' expected testimony.

XV.

SERVICE UPON PLAINTIFF

IT IS FURTHER ORDERED that any correspondence, papers, and pleadings related to this Order shall be served upon Plaintiff by overnight mail or courier delivery, facsimile, or e-mail to:

William J. Hodor, Esq.
Federal Trade Commission
55 East Monroe Street, Suite 1860
Chicago, Illinois 60603
(312) 960-5634 [telephone]
(312) 960-5600 [facsimile]
E-mail: whodor@ftc.gov

XVI.

DURATION OF TEMPORARY RESTRAINING ORDER

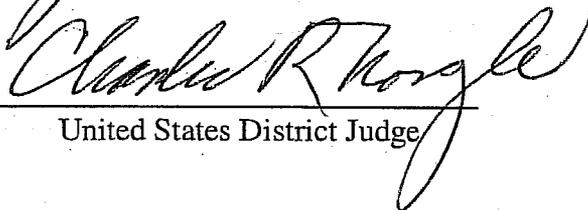
IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on February 12, 2007, at 11:59 p.m., unless, within such time, for good cause shown, the Order is extended, or unless, as to any Defendant, the Defendant consents that it should be extended for a longer period of time, as provided by Fed. R. Civ. P. 65.

XVII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

IT IS SO ORDERED, this 29 day of Jan, 2007, at 10:45.m.


United States District Judge

have an account of any kind upon which I am authorized to draw, and its officers, employees and agents, to disclose all information and deliver copies of all documents of every nature in its possession or control which relate to the said accounts to any attorney of the Federal Trade Commission, and to give evidence relevant thereto, in the above-captioned matter, *FTC v. Select Personnel Management, Inc., et al.*, now pending in the United States District Court for the Northern District of Illinois, and this shall be irrevocable authority for so doing. This direction is intended to apply to the laws of countries other than the United States of America which restrict or prohibit the disclosure of bank or other financial information without the consent of the holder of the account, and shall be construed as consent with respect thereto, and the same shall apply to any of the accounts for which I may be the relevant principal.

Dated: _____, 2007

[Signature]

[Print Name]